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Docket No.: 102792-508

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

APPLICATION OF: RALF WIEDEMANN  
SERIAL No.: 10/560,207  
FILED: DECEMBER 9, 2005  
EXAMINER: REGINA M. YOO  
ART GROUP: 1797  
TITLE: AUTOMATIC WASHING MACHINE DETERGENT  
DISPENSING DEVICE

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MAIL STOP APPEAL BRIEF  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

September 6, 2011

**APPELLANTS' BRIEF ON APPEAL PURSUANT TO 37 CFR § 41.37**

SIR:

This is an appeal from the final rejection of claims 1-4, 7-10, 12, 16 and 20 of the present application.

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**(1) REAL PARTY IN INTEREST**

The real party in interest is Reckitt Benckiser N.V. by virtue of an assignment recorded in the United States Patent and Trademark Office on January 26, 2006, at Reel 017212, Frame 0592.

**(2) RELATED APPEALS AND INTERFERENCES**

There are no related appeals or interferences.

**(3) STATUS OF CLAIMS**

The application was originally filed on December 9, 2005, claiming priority to PCT/GB04/002354, with claims 1-22. A preliminary amendment filed with the application on the same date amended claims 1-22. After a Restriction Requirement dated October 4, 2007, the appellants elected Group I, directed to claims 1-20, and Specie A, directed to claims 1-10, 12, 15-16, and 20. Claims 6-11, 13-15, 17-19, 21 and 22 were withdrawn upon the Examiner deeming the Restriction Requirement final. The Examiner issued a first Office Action dated December 11, 2007 rejecting pending claims 1-10, 12, 15-16 and 20. In their response dated April 7, 2008, the appellants amended claims 1-2, 12 and 15. The Examiner then issued a Final Office Action, rejecting the pending claims, and holding that claim 15, as amended, was directed to a non-elected invention. This claims was subsequently withdrawn. The appellants filed a Response with a Request for Continued Examination on October 31, 2008, amending claim 1 and cancelling claim 5. The Examiner then issued a first Office Action after the first RCE on January

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7, 2009. The appellants responded on July 7, 2009, amending claims 1, 6, 8 and 9. A Final Office Action after the RCE was then issued on January 28, 2010. The appellants responded amending claim 1, and filing a second RCE. Again, the Examiner maintained the rejections in a First Office Action after the second RCE dated May 20, 2010. The appellants filed a response without amending the claims on October 20, 2010. A Final Office Action after the second RCE was issued on January 4, 2011, whereupon the appellants then filed a Notice of Appeal in response to the Final Office Action. Claims 1-4 and 6-22 are pending and stand rejected. This is an appeal of currently pending claims 1-4 and 6-22.

**(4) STATUS OF AMENDMENTS**

In response to the Final Office Action dated January 4, 2011; the Appellants filed a Notice of Appeal. There are no unentered or pending amendments to these claims.

**(5) SUMMARY OF THE CLAIMED SUBJECT MATTER**

The sole independent claim pending in the present application, viz., claim 1, is directed to an automatic dishwashing machine detergent dispensing device. (page 1, lines 3-4). The device contains a detergent bar, comprising a surfactant, disposed within a channel, wherein the detergent bar completely fills at least a portion of the channel across the entire bore of the channel. The channel has an open end and an inlet aperture, which is in communication with the open end of the channel. (page 3, line 27 to page 4, line 2; page 11, lines 24-26).

Claims 2-4 and 6-22 depend either directly or indirectly from claim 1.

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**(6) GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL**

- I. The rejection of claims 1-4, 7-10, 12, 16 and 20 under 35 U.S.C. §103(a) as obvious over Reeves (US 6,372,126) in view of Buchan (US 4,192,763) or Hung (US 5,753,602); and
- II. The rejection of claims 1-4, 7-10, 12, 16 and 20 under 35 U.S.C. §103(a) as obvious over Jordan (US 4,338,191) in view of Buchan (US 4,192,763) or Hung (US 5,753,602).

**(7) ARGUMENT**

**I. THE REJECTION OF CLAIMS 1-4, 7-10, 12, 16 and 20 UNDER 35 U.S.C. §103(a) OVER REEVES IN VIEW OF BUCHAN OR HUNG**

The Examiner rejected claims 1-4, 7-10, 12, 16 and 20 under 35 U.S.C. §103(a) as obvious over Reeves in view of Buchan or Hung. The applicants respectfully request that the Honorable Board overturn this rejection.

**A. A *prima facie* case of obviousness cannot be established because Reeves is non-analogous art**

Although the final determination of obviousness under §103 is a question of law, it is based on several underlying factual findings, including (1) the scope and content of the prior art; (2) the level of ordinary skill in the pertinent art; (3) the differences between the claimed invention and the prior art; and (4) evidence of secondary factors. *Graham v. John Deere Co.*, 383 U.S. 1, 17-18 (1966).

The applicants submit that Reeves is not analogous to the present invention, and a person

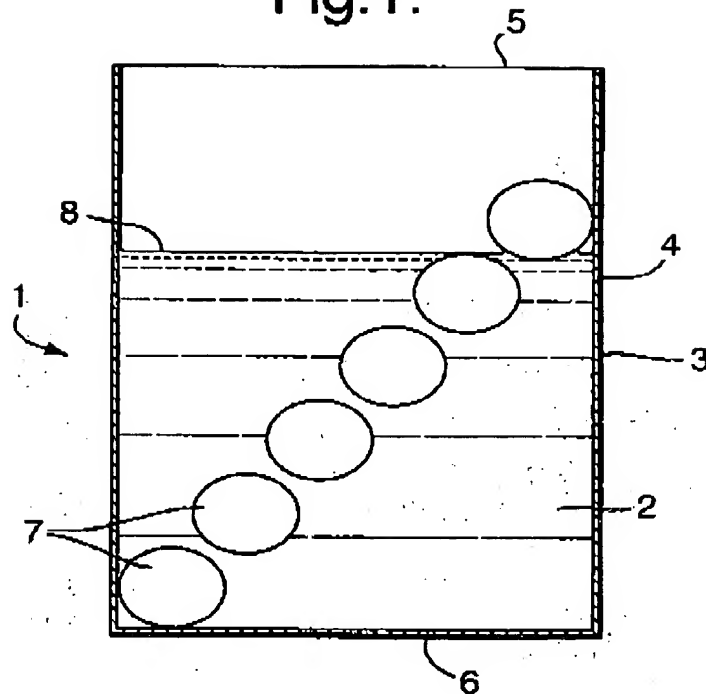
of ordinary skill in the art would not look to this reference for any guidance when seeking to improve upon automatic dishwashing machine detergent dispensing devices.

A reference qualifies as prior art for an obviousness determination under §103 only when it is analogous to the claimed invention. *In re Klein*, -- F.3d ---, 98 U.S.P.Q.2d 1991 7 (Fed. Cir. 2011). See also *Innovation Toys, LLC, v. MGA Entertainment, Inc.*, 637 F.3d 1314, 98 U.S.P.Q.2d 1013 (Fed. Cir. 2011). In *Klein*, the invention at issue was directed to a mixing device for use in preparation of sugar-water nectar for bird and butterfly feeders. The Court held that because each of the cited references' purpose was to separate solid objects, the references were not analogous to the claimed invention because a skilled artisan considering the problem addressed by the claimed invention would not be motivated to consider these references when making the invention. *Klein* at 1995.

The present invention is directed to an automatic dishwasher detergent dispensing device having a detergent bar comprising a surfactant. The detergent bar is disposed within a channel, wherein the detergent bar completely fills at least a portion of the channel across the entire bore of the channel, the channel having an open end and an inlet aperture which is in communication with the open end. The detergent is released into the water, and the detergent/water is then used to clean dishes or other wares. The structure of the present invention is limited by the fact that it must fit into an automatic dishwasher, where space inside the dishwasher is typically at a premium. There is usually very little space available for a dispensing device, so the device of the present invention must be sufficiently sized to release detergent, but must also fit within the limited confines of the dishwasher. Figure 1, below, illustrates an embodiment of the present

invention.

Fig.1.



Reeves is directed to a chlorinator for aerobic waste treatment systems, swimming pools or similar systems having a contained flowing fluid requiring chlorination. (See Reeves, col. 1, lines 14-18). The primary purpose of Reeve's invention, shown below, is to treat large quantities of water through a contained flow with chlorine. There is nothing in Reeves to suggest that the invention should be modified to add detergent to water for the purpose of cleaning another object. Reeves only treats the water. Indeed, Reeves, states unequivocally that the purpose of the invention is "as a chlorinator, for water (e.g. as for a swimming pool) or wastewater (e.g. as

for an aerobic waste treatment systems) that is in functional attachment with a fluid stream". (col. 2, lines 51-54). This means that Reeves requires that the water flow in a closed system, compared to an automatic dishwasher where the water is sprayed throughout the inner space (i.e. water flows in an open system).

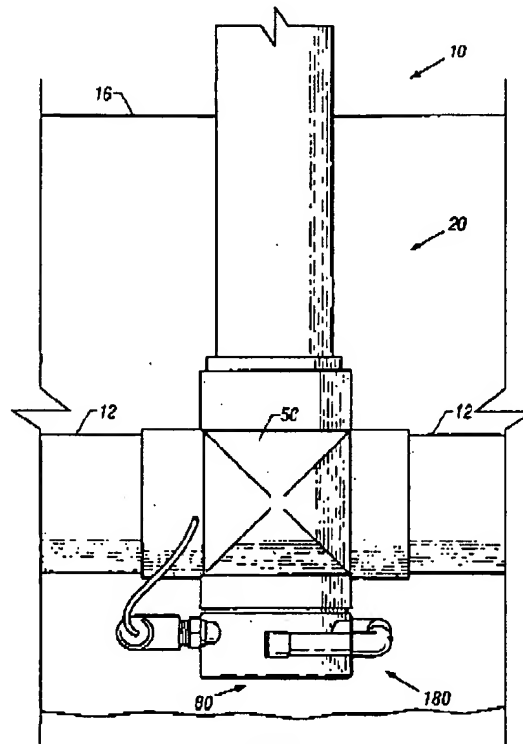


FIG. 1

A skilled artisan, when considering the problem of dispensing detergent into an automatic dishwasher, would not be motivated to consider a reference directed to a chlorinator requiring a closed fluid stream for treating sewage or swimming pools, particularly since Reeves does not teach a device adapted for use in an automatic dishwasher that is not in functional attachment to a fluid stream. The commonality of Reeves and the present invention is no closer than that of the

prior art references cited in *Klein* and Klein's bird and butterfly feeder. Accordingly, the applicants respectfully submit that a *prima facie* case of obviousness cannot be established, and request that the Honorable Board overturn the Examiner's rejection.

**II. THE REJECTION OF CLAIMS 1-4, 7-10, 12, 16 and 20 UNDER 35 U.S.C. §103(a) AS OBVIOUS OVER JORDAN IN VIEW OF BUCHAN OR HUNG**

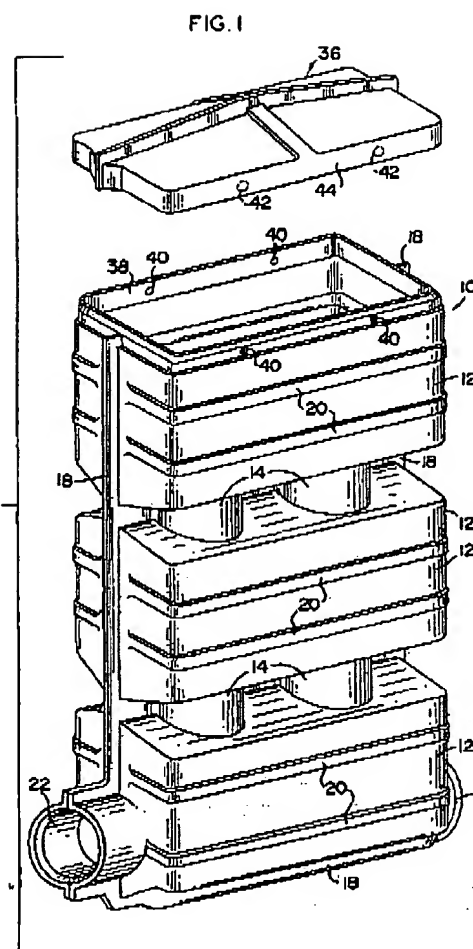
The Examiner rejected claims 1-4, 7-10, 12, 16 and 20 under 35 U.S.C. §103(a) as obvious over Jordan in view of Buchan or Hung. The appellants respectfully request that the Honorable Board overturn this rejection.

**A. A *prima facie* case of obviousness cannot be established because Reeves is non-analogous art**

Similar to Reeves, discussed above, the appellants submit that Jordan is also a non-analogous reference, and a person of ordinary skill in the art would not look to this reference for any guidance when seeking to improve upon automatic dishwashing machine detergent dispensing devices.

Jordan is directed to an apparatus for septic fluids. (See Abstract). Like Reeves, Jordan only teaches treating large quantities of water with chlorine or other chemical treating agents. (col. 1, lines 4-6). Jordan's device is shown below.





There is nothing in Jordan to suggest that his device is used for dispensing detergent or other composition *into* water, let alone into an automatic dishwashing machine. An inventor would not consider Jordan's teachings when seeking guidance for the problem of finding a new automatic dishwashing detergent dispenser. Accordingly, the applicants respectfully submit that a *prima facie* case of obviousness cannot be established, and request that the Honorable Board overturn the Examiner's rejection.

Based on the foregoing reasons, the appellants submit that neither reference teach all of the limitations of the presently claimed invention. The appellants respectfully request the Honorable Board to overturn the rejections.

**(8) CONCLUSION**

In view of the foregoing, Appellants respectfully request that the Honorable Board reverse the final rejection, and remand the application to the Examiner with instructions to issue a Notice of Allowance.

Respectfully submitted,

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**(9) CLAIMS APPENDIX**

Claim 1. (Previously Presented) An automatic dishwashing machine detergent dispensing device comprising a detergent bar comprising a surfactant, said detergent bar disposed within a channel, wherein the detergent bar completely fills at least a portion of the channel across the entire bore of the channel, the channel having an open end and an inlet aperture which is in communication with said open end.

Claim 2. (Previously Presented) A device according to claim 1, wherein the channel has a uniform bore, along its length or at least along the portion filled by the detergent bar.

Claim 3. (Previously Presented) A device according to claim 1, wherein the channel is a tube.

Claim 4. (Previously Presented) A device according to claim 4, wherein the tube is cylindrical.

Claim 5. (Cancelled)

Claim 6. (Withdrawn) A device according to claim 1, wherein the channel comprises a form similar to a drinking glass.

Claim 7. (Previously Presented) A device according to claim 1, wherein the channel has a plurality of open ends each of which being in communication with an inlet aperture.

Claim 8. (Previously Presented) A device according to claim 1, wherein the channel comprises a tube both ends of which are open.

Claim 9. (Previously Presented) A device according to claim 1, wherein the open end of the channel comprises the inlet aperture.

Claim 10. (Previously Presented) A device according to claim 1, wherein the channel has a secondary aperture.

Claim 11. (Withdrawn) A device according to claim 10, wherein the secondary aperture comprises a slit in the side of the channel.

Claim 12. (Previously Presented) A device according to claim 10, wherein the secondary aperture may comprise a plurality of separate apertures.

Claim 13. (Withdrawn) A device according to claim 1, wherein a barrier is arranged around the periphery of the channel.

Claim 14. (Withdrawn) A device according to claim 13, wherein the barrier comprises a sleeve arranged around the exterior of the channel.

Claim 15. (Withdrawn) A device according to claim 10, wherein the diameter of the secondary aperture is larger than the holes of the dishwasher sieve.

Claim 16. (Previously Presented) A device according to claim 10, wherein the diameter of the secondary aperture is less than 5mm.

Claim 17. (Withdrawn) A device according to claim 1, wherein the device comprises a means to control the amount of wash liquor which contacts the detergent bar.

Claim 18. (Withdrawn) A device according to claim 17, wherein the means comprises a collecting funnel.

Claim 19. (Withdrawn) A device according to claim 18, wherein the collecting funnel has a drainage opening in its collecting portion.

Claim 20. (Previously Presented) A device according to claim 1, wherein the channel comprises a water-resistant or water insoluble material.

Claim 21. (Withdrawn) The use of an automatic washing machine detergent dispensing device in an automatic washing machine in an automatic washing machine process, wherein the device comprises a bar of detergent disposed within a channel, the detergent bar completely filling at least a portion of the channel across the entire bore of the channel, the channel having an aperture which is in communication therewith.

Claim 22. (Withdrawn) An automatic washing machine process, comprising the step of providing to an automatic washing machine a detergent dispensing device, wherein the device comprises a bar of detergent disposed within a channel, the detergent bar completely filling at least a portion of the channel across the entire bore of the channel, the channel having an aperture which is in communication therewith.

**(10) EVIDENCE APPENDIX**

None.

**(11) RELATED PROCEEDINGS APPENDIX**

None.